

108TH CONGRESS  
2D SESSION

# S. 2605

---

## AN ACT

To direct the Secretary of the Interior and the heads of other Federal agencies to carry out an agreement resolving major issues relating to the adjudication of water rights in the Snake River Basin, Idaho, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Snake River Water  
5       Rights Act of 2004”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to resolve some of the largest outstanding  
4 issues with respect to the Snake River Basin Adju-  
5 dication in Idaho in such a manner as to provide im-  
6 portant benefits to the United States, the State of  
7 Idaho, the Nez Perce Tribe, the allottees, and citi-  
8 zens of the State;

9 (2) to achieve a fair, equitable, and final settle-  
10 ment of all claims of the Nez Perce Tribe, its mem-  
11 bers, and allottees and the United States on behalf  
12 of the Tribe, its members, and allottees to the water  
13 of the Snake River Basin within Idaho;

14 (3) to authorize, ratify, and confirm the Agree-  
15 ment among the parties submitted to the Snake  
16 River Basin Adjudication Court and provide all par-  
17 ties with the benefits of the Agreement;

18 (4) to direct—

19 (A) the Secretary, acting through the Bu-  
20 reau of Reclamation, the Bureau of Land Man-  
21 agement, the Bureau of Indian Affairs, and  
22 other agencies; and

23 (B) the heads of other Federal agencies  
24 authorized to execute and perform actions nec-  
25 essary to carry out the Agreement;

1 to perform all of their obligations under the Agree-  
 2 ment and this Act; and

3 (5) to authorize the actions and appropriations  
 4 necessary for the United States to meet the obliga-  
 5 tions of the United States under the Agreement and  
 6 this Act.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) AGREEMENT.—The term “Agreement”  
 10 means the document titled “Mediator’s Term Sheet”  
 11 dated April 20, 2004, and submitted on that date to  
 12 the SRBA Court in SRBA Consolidated Subcase  
 13 03–10022 and SRBA Consolidated Subcase 67–  
 14 13701, with all appendices to the document.

15 (2) ALLOTTEE.—The term “allottee” means a  
 16 person that holds a beneficial real property interest  
 17 in an Indian allotment that is—

18 (A) located within the Nez Perce Reserva-  
 19 tion; and

20 (B) held in trust by the United States.

21 (3) CONSUMPTIVE USE RESERVED WATER  
 22 RIGHT.—The term “consumptive use reserved water  
 23 right” means the Federal reserved water right of  
 24 50,000 acre-feet per year, as described in the Agree-  
 25 ment, to be decreed to the United States in trust for

1 the Tribe and the allottees, with a priority date of  
2 1855.

3 (4) PARTIES.—The term “parties” means the  
4 United States, the State, the Tribe, and any other  
5 entity or person that submitted, or joined in the sub-  
6 mission of, the Agreement to the SRBA Court on  
7 April 20, 2004.

8 (5) SECRETARY.—The term “Secretary” means  
9 the Secretary of the Interior.

10 (6) SNAKE RIVER BASIN.—The term “Snake  
11 River Basin” means the geographic area in the  
12 State described in paragraph 3 of the Commence-  
13 ment Order issued by the SRBA Court on November  
14 19, 1987.

15 (7) SPRINGS OR FOUNTAINS WATER RIGHT.—  
16 The term “springs or fountains water right” means  
17 the Tribe’s treaty right of access to and use of water  
18 from springs or fountains on Federal public land  
19 within the area ceded by the Tribe in the Treaty of  
20 June 9, 1863 (14 Stat. 647), as recognized under  
21 the Agreement.

22 (8) SRBA.—The term “SRBA” means the  
23 Snake River Basin Adjudication litigation before the  
24 SRBA Court styled as In re Snake River Basin Ad-  
25 judication, Case No. 39576.

1           (9) SRBA COURT.—The term “SRBA Court”  
 2           means the District Court of the Fifth Judicial Dis-  
 3           trict of the State of Idaho, In and For the County  
 4           of Twin Falls in re Snake River Basin Adjudication.

5           (10) STATE.—The term “State” means the  
 6           State of Idaho.

7           (11) TRIBE.—The term “Tribe” means the Nez  
 8           Perce Tribe.

9   **SEC. 4. APPROVAL, RATIFICATION, AND CONFIRMATION OF**  
 10                           **AGREEMENT.**

11       (a) IN GENERAL.—Except to the extent that the  
 12       Agreement conflicts with this Act, the Agreement is ap-  
 13       proved, ratified, and confirmed.

14       (b) EXECUTION AND PERFORMANCE.—The Secretary  
 15       and the other heads of Federal agencies with obligations  
 16       under the Agreement shall execute and perform all ac-  
 17       tions, consistent with this Act, that are necessary to carry  
 18       out the Agreement.

19   **SEC. 5. BUREAU OF RECLAMATION WATER USE.**

20       (a) IN GENERAL.—As part of the overall implementa-  
 21       tion of the Agreement, the Secretary shall take such ac-  
 22       tions consistent with the Agreement, this Act, and water  
 23       law of the State as are necessary to carry out the Snake  
 24       River Flow Component of the Agreement.

25       (b) MITIGATION FOR CHANGE OF USE OF WATER.—

1           (1) AUTHORIZATION OF APPROPRIATIONS.—

2           There is authorized to be appropriated to the Sec-  
 3           retary \$2,000,000 for a 1-time payment to local gov-  
 4           ernments to mitigate for the change of use of water  
 5           acquired by the Bureau of Reclamation under sec-  
 6           tion III.C.6 of the Agreement.

7           (2) DISTRIBUTION OF FUNDS.—Funds made  
 8           available under paragraph (1) shall be distributed by  
 9           the Secretary to local governments in accordance  
 10          with a plan provided to the Secretary by the State.

11          (3) PAYMENTS.—Payments by the Secretary  
 12          shall be made on a pro rata basis as water rights  
 13          are acquired by the Bureau of Reclamation.

14 **SEC. 6. BUREAU OF LAND MANAGEMENT LAND TRANSFER.**

15          (a) TRANSFER.—

16           (1) IN GENERAL.—The Secretary shall transfer  
 17          land selected by the Tribe under paragraph (2) to  
 18          the Bureau of Indian Affairs to be held in trust for  
 19          the Tribe.

20           (2) LAND SELECTION.—The land transferred  
 21          shall be selected by the Tribe from a list of parcels  
 22          of land managed by the Bureau of Land Manage-  
 23          ment that are available for transfer, as depicted on  
 24          the map entitled “North Idaho BLM Land Eligible  
 25          for Selection by the Nez Perce Tribe” dated May

2004, on file with the Director of the Bureau of Land Management, not including any parcel designated on the map as being on the Clearwater River or Lolo Creek.

(3) MAXIMUM VALUE.—The land selected by the Tribe for transfer shall be limited to a maximum value in total of not more than \$7,000,000, as determined by an independent appraisal of fair market value prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions.

(b) EXISTING RIGHTS AND USES.—

(1) IN GENERAL.—On any land selected by the Tribe under subsection (a)(2), any use in existence on the date of transfer under subsection (a) under a lease or permit with the Bureau of Land Management, including grazing, shall remain in effect until the date of expiration of the lease or permit, unless the holder of the lease or permit requests an earlier termination of the lease or permit, in which case the Secretary shall grant the request.

(2) AVAILABILITY OF AMOUNTS.—Amounts that accrue to the United States under a lease or permit described in paragraph (1) from sales, bo-

1 nuses, royalties, and rentals relating to any land  
 2 transferred to the Tribe under this section shall be  
 3 made available to the Tribe by the Secretary in the  
 4 same manner as amounts received from other land  
 5 held by the Secretary in trust for the Tribe.

6 (c) DATE OF TRANSFER.—No land shall be trans-  
 7 ferred to the Bureau of Indian Affairs to be held in trust  
 8 for the Tribe under this section until the waivers and re-  
 9 leases under section 10(a) take effect.

10 (d) AUTHORIZATION OF APPROPRIATIONS.—

11 (1) IN GENERAL.—There is authorized to be  
 12 appropriated to the Secretary \$200,000 for 1-time  
 13 payments to local governments to mitigate for the  
 14 transfer of land by the Bureau of Land Management  
 15 to the Tribe under section I.F of the Agreement.

16 (2) PAYMENTS.—Payments under paragraph  
 17 (1) shall be made on a pro rata basis as parcels of  
 18 land are acquired by the Tribe.

19 **SEC. 7. WATER RIGHTS.**

20 (a) HOLDING IN TRUST.—

21 (1) IN GENERAL.—The consumptive use re-  
 22 served water right shall—

23 (A) be held in trust by the United States  
 24 for the benefit of the Tribe and allottees as set  
 25 forth in this section; and

1 (B) be subject to section 7 of the Act of  
 2 February 8, 1887 (25 U.S.C. 381).

3 (2) SPRINGS OR FOUNTAINS WATER RIGHT.—  
 4 The springs or fountains water right of the Tribe  
 5 shall be held in trust by the United States for the  
 6 benefit of the Tribe.

7 (3) ALLOTTEES.—Allottees shall be entitled to  
 8 a just and equitable allocation of the consumptive  
 9 use reserved water right for irrigation purposes.

10 (b) WATER CODE.—

11 (1) ENACTMENT OF WATER CODE.—Not later  
 12 than 3 years after the date of enactment of this Act,  
 13 the Tribe shall enact a water code, subject to any  
 14 applicable provision of law, that—

15 (A) manages, regulates, and controls the  
 16 consumptive use reserved water right so as to  
 17 allocate water for irrigation, domestic, commer-  
 18 cial, municipal, industrial, cultural, or other  
 19 uses; and

20 (B) includes, subject to approval of the  
 21 Secretary—

22 (i) a due process system for the con-  
 23 sideration and determination of any re-  
 24 quest by an allottee, or any successor in in-  
 25 terest to an allottee, for an allocation of

1           such water for irrigation purposes on allot-  
2           ted land, including a process for an appeal  
3           and adjudication of denied or disputed dis-  
4           tribution of water and for resolution of  
5           contested administrative decisions; and

6                   (ii) a process to protect the interests  
7           of allottees when entering into any lease  
8           under subsection (e).

9           (2) SECRETARIAL APPROVAL.—Any provision of  
10          the water code and any amendments to the water  
11          code that affect the rights of the allottees shall be  
12          subject to approval by the Secretary, and no such  
13          provision or amendment shall be valid until approved  
14          by the Secretary.

15          (3) INTERIM ADMINISTRATION.—The Secretary  
16          shall administer the consumptive use reserved water  
17          right until such date as the water code described in  
18          paragraph (2) has been enacted by the Tribe and  
19          the Secretary has approved the relevant portions of  
20          the water code.

21          (c) EXHAUSTION OF REMEDIES.—Before asserting  
22          any claim against the United States under section 7 of  
23          the Act of February 8, 1887 (25 U.S.C. 381) or other  
24          applicable law, a claimant shall exhaust remedies available  
25          under the Tribe’s water code and Tribal law.

1 (d) PETITION TO THE SECRETARY.—Following ex-  
2 haustion of remedies in accordance with subsection (c), a  
3 claimant may petition the Secretary for relief.

4 (e) SATISFACTION OF CLAIMS.—

5 (1) IN GENERAL.—The water rights and other  
6 benefits granted or confirmed by the Agreement and  
7 this Act shall be in full satisfaction of all claims for  
8 water rights and injuries to water rights of the  
9 allottees.

10 (2) SATISFACTION OF ENTITLEMENTS.—Any  
11 entitlement to water of any allottee under Federal  
12 law shall be satisfied out of the consumptive use re-  
13 served water right.

14 (3) COMPLETE SUBSTITUTION.—The water  
15 rights, resources, and other benefits provided by this  
16 Act are a complete substitution for any rights that  
17 may have been held by, or any claims that may have  
18 been asserted by, allottees within the exterior bound-  
19 aries of the Reservation before the date of enact-  
20 ment of this Act.

21 (f) ABANDONMENT, FORFEITURE, OR NONUSE.—  
22 The consumptive use reserved water right and the springs  
23 or fountains water right shall not be subject to loss by  
24 abandonment, forfeiture, or nonuse.

25 (g) LEASE OF WATER.—

1           (1) IN GENERAL.—Subject to the water code,  
 2           the Tribe, without further approval of the Secretary,  
 3           may lease water to which the Tribe is entitled under  
 4           the consumptive use reserved water right through  
 5           any State water bank in the same manner and sub-  
 6           ject to the same rules and requirements that govern  
 7           any other lessor of water to the water bank.

8           (2) FUNDS.—Any funds accruing to the Tribe  
 9           from any lease under paragraph (1) shall be the  
 10          property of the Tribe, and the United States shall  
 11          have no trust obligation or other obligation to mon-  
 12          itor, administer, or account for any consideration re-  
 13          ceived by the Tribe under any such lease.

14 **SEC. 8. TRIBAL FUNDS.**

15          (a) DEFINITION OF FUND.—In this section, the term  
 16          “Fund” means—

17               (1) the Nez Perce Tribe Water and Fisheries  
 18          Fund established under subsection (b)(1); and

19               (2) the Nez Perce Tribe Domestic Water Sup-  
 20          ply Fund established under subsection (b)(2).

21          (b) ESTABLISHMENT.—There are established in the  
 22          Treasury of the United States—

23               (1) a fund to be known as the “Nez Perce  
 24          Tribe Water and Fisheries Fund”, to be used to pay  
 25          or reimburse costs incurred by the Tribe in acquir-

1       ing land and water rights, restoring or improving  
 2       fish habitat, or for fish production, agricultural de-  
 3       velopment, cultural preservation, water resource de-  
 4       velopment, or fisheries-related projects; and

5               (2) a fund to be known as the “Nez Perce Do-  
 6       mestic Water Supply Fund”, to be used to pay the  
 7       costs for design and construction of water supply  
 8       and sewer systems for tribal communities, including  
 9       a water quality testing laboratory.

10       (c) MANAGEMENT OF THE FUNDS.—The Secretary  
 11       shall manage the Funds, make investments from the  
 12       Funds, and make amounts available from the Funds for  
 13       distribution to the Tribe consistent with the American In-  
 14       dian Trust Fund Management Reform Act of 1994 (25  
 15       U.S.C. 4001 et seq.), this Act, and the Agreement.

16       (d) INVESTMENT OF THE FUNDS.—The Secretary  
 17       shall invest amounts in the Funds in accordance with—

18               (1) the Act of April 1, 1880 (25 U.S.C. 161;  
 19       21 Stat. 70, chapter 41);

20               (2) the first section of the Act of June 24,  
 21       1938 (25 U.S.C. 162a; 52 Stat. 1037, chapter 648);  
 22       and

23               (3) subsection (c).

24       (e) AVAILABILITY OF AMOUNTS FROM THE  
 25       FUNDS.—Amounts made available under subsection (h)

1 shall be available for expenditure or withdrawal only after  
2 the waivers and releases under section 10(a) take effect.

3 (f) EXPENDITURES AND WITHDRAWAL.—

4 (1) TRIBAL MANAGEMENT PLAN.—

5 (A) IN GENERAL.—The Tribe may with-  
6 draw all or part of amounts in the Funds on  
7 approval by the Secretary of a tribal manage-  
8 ment plan as described in the American Indian  
9 Trust Fund Management Reform Act of 1994  
10 (25 U.S.C. 4001 et seq.).

11 (B) REQUIREMENTS.—In addition to the  
12 requirements under the American Indian Trust  
13 Fund Management Reform Act of 1994 (25  
14 U.S.C. 4001 et seq.), the tribal management  
15 plan shall require that the Tribe spend any  
16 amounts withdrawn from the Funds in accord-  
17 ance with the purposes described in subsection  
18 (b).

19 (C) ENFORCEMENT.—The Secretary may  
20 take judicial or administrative action to enforce  
21 the provisions of any tribal management plan to  
22 ensure that any amounts withdrawn from the  
23 Funds under the plan are used in accordance  
24 with this Act and the Agreement.

1 (D) LIABILITY.—If the Tribe exercises the  
 2 right to withdraw amounts from the Funds,  
 3 neither the Secretary nor the Secretary of the  
 4 Treasury shall retain any liability for the ex-  
 5 penditure or investment of the amounts.

6 (2) EXPENDITURE PLAN.—

7 (A) IN GENERAL.—The Tribe shall submit  
 8 to the Secretary for approval an expenditure  
 9 plan for any portion of the amounts made avail-  
 10 able under subsection (h) that the Tribe does  
 11 not withdraw under this subsection.

12 (B) DESCRIPTION.—The expenditure plan  
 13 shall describe the manner in which, and the  
 14 purposes for which, amounts of the Tribe re-  
 15 maining in the Funds will be used.

16 (C) APPROVAL.—On receipt of an expendi-  
 17 ture plan under subparagraph (A), the Sec-  
 18 retary shall approve the plan if the Secretary  
 19 determines that the plan is reasonable and con-  
 20 sistent with this Act and the Agreement.

21 (D) ANNUAL REPORT.—For each Fund,  
 22 the Tribe shall submit to the Secretary an an-  
 23 nual report that describes all expenditures from  
 24 the Fund during the year covered by the report.

1 (g) NO PER CAPITA PAYMENTS.—No part of the  
 2 principal of the Funds, or of the income accruing in the  
 3 Funds, shall be distributed to any member of the Tribe  
 4 on a per capita basis.

5 (h) AUTHORIZATION OF APPROPRIATIONS.—There  
 6 are authorized to be appropriated—

7 (1) to the Nez Perce Tribe Water and Fisheries  
 8 Fund—

9 (A) for fiscal year 2007, \$7,830,000;

10 (B) for fiscal year 2008, \$4,730,000;

11 (C) for fiscal year 2009, \$7,380,000;

12 (D) for fiscal year 2010, \$10,080,000;

13 (E) for fiscal year 2011, \$11,630,000;

14 (F) for fiscal year 2012, \$9,450,000; and

15 (G) for fiscal year 2013, \$9,000,000; and

16 (2) to the Nez Perce Tribe Domestic Water  
 17 Supply Fund—

18 (A) for fiscal year 2007, \$5,100,000;

19 (B) for fiscal year 2008, \$8,200,000;

20 (C) for fiscal year 2009, \$5,550,000;

21 (D) for fiscal year 2010, \$2,850,000; and

22 (E) for fiscal year 2011, \$1,300,000.

23 **SEC. 9. SALMON AND CLEARWATER RIVER BASINS HABITAT**  
 24 **FUND.**

25 (a) ESTABLISHMENT OF FUND.—

1           (1) IN GENERAL.—There is established in the  
 2       Treasury of the United States a fund to be known  
 3       as the “Salmon and Clearwater River Basins Habi-  
 4       tat Fund” (referred to in this section as the  
 5       “Fund”), to be administered by the Secretary.

6           (2) ACCOUNTS.—There is established within the  
 7       Fund—

8                   (A) an account to be known as the “Nez  
 9       Perce Tribe Salmon and Clearwater River Ba-  
 10      sins Habitat Account”, which shall be adminis-  
 11      tered by the Secretary for use by the Tribe sub-  
 12      ject to the same provisions for management, in-  
 13      vestment, and expenditure as the funds estab-  
 14      lished by section 8; and

15                  (B) an account to be known as the “Idaho  
 16      Salmon and Clearwater River Basins Habitat  
 17      Account”, which shall be administered by the  
 18      Secretary and provided to the State as provided  
 19      in the Agreement and this Act.

20       (b) USE OF THE FUND.—

21           (1) IN GENERAL.—The Fund shall be used to  
 22      supplement amounts made available under any other  
 23      law for habitat protection and restoration in the  
 24      Salmon and Clearwater River Basins in Idaho, in-  
 25      cluding projects and programs intended to protect

1 and restore listed fish and their habitat in those ba-  
 2 sins, as specified in the Agreement and this Act.

3 (2) RELEASE OF FUNDS.—The Secretary shall  
 4 release funds from the Idaho Salmon and Clearwater  
 5 River Basins Habitat Account in accordance with  
 6 section 6(d)(2) of the Endangered Species Act (16  
 7 U.S.C. 1535(d)(2)).

8 (3) NO ALLOCATION REQUIREMENT.—The use  
 9 of the Fund shall not be subject to the allocation  
 10 procedures under section 6(d)(1) of the Endangered  
 11 Species Act of 1973 (16 U.S.C. 1535(d)(1)).

12 (c) AVAILABILITY OF AMOUNTS IN THE FUND.—  
 13 Amounts made available under subsection (d) shall be  
 14 available for expenditure or withdrawal only after the  
 15 waivers and releases under section 10(a) take effect.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
 17 are authorized to be appropriated—

18 (1) to the Nez Perce Tribe Salmon and Clear-  
 19 water River Basins Habitat Account, \$2,533,334 for  
 20 each of fiscal years 2007 through 2011; and

21 (2) to the Idaho Salmon and Clearwater River  
 22 Basins Habitat Account, \$5,066,666 for each of fis-  
 23 cal years 2007 through 2011.

1 **SEC. 10. TRIBAL WAIVER AND RELEASE OF CLAIMS.**

2 (a) WAIVER AND RELEASE OF CLAIMS IN GEN-  
3 ERAL.—

4 (1) CLAIMS TO WATER RIGHTS; CLAIMS FOR IN-  
5 JURIES TO WATER RIGHTS OR TREATY RIGHTS.—Ex-  
6 cept as otherwise provided in this Act, the United  
7 States on behalf of the Tribe and the allottees, and  
8 the Tribe, waive and release—

9 (A) all claims to water rights within the  
10 Snake River Basin (as defined in section 3);

11 (B) all claims for injuries to such water  
12 rights; and

13 (C) all claims for injuries to the treaty  
14 rights of the Tribe to the extent that such inju-  
15 ries result or resulted from flow modifications  
16 or reductions in the quantity of water available  
17 that accrued at any time up to and including  
18 the effective date of the settlement, and any  
19 continuation thereafter of any such claims,  
20 against the State, any agency or political sub-  
21 division of the State, or any person, entity, cor-  
22 poration, municipal corporation, or quasi-mu-  
23 nicipal corporation.

24 (2) CLAIMS BASED ON REDUCED WATER QUAL-  
25 ITY OR REDUCTIONS IN WATER QUANTITY.—The  
26 United States on behalf of the Tribe and the

1 allottees, and the Tribe, waive and release any claim,  
 2 under any treaty theory, based on reduced water  
 3 quality resulting directly from flow modifications or  
 4 reductions in the quantity of water available in the  
 5 Snake River Basin against any party to the Agree-  
 6 ment.

7 (3) NO FUTURE ASSERTION OF CLAIMS.—No  
 8 water right claim that the Tribe or the allottees have  
 9 asserted or may in the future assert outside the  
 10 Snake River Basin shall require water to be supplied  
 11 from the Snake River Basin to satisfy the claim.

12 (4) EFFECT OF WAIVERS AND RELEASES.—The  
 13 waivers and releases by the United States and the  
 14 Tribe under this subsection—

15 (A) shall be permanent and enforceable;  
 16 and

17 (B) shall survive any subsequent termi-  
 18 nation of any component of the settlement de-  
 19 scribed in the Agreement or this Act.

20 (5) EFFECTIVE DATE.—The waivers and re-  
 21 leases under this subsection shall take effect on the  
 22 date on which the Secretary causes to be published  
 23 in the Federal Register a statement of findings that  
 24 the actions set forth in section IV.L of the  
 25 Agreement—

1           (A) have been completed, including  
 2           issuance of a judgment and decree by the  
 3           SRBA court from which no further appeal may  
 4           be taken; and

5           (B) have been determined by the United  
 6           States on behalf of the Tribe and the allottees,  
 7           the Tribe, and the State of Idaho to be con-  
 8           sistent in all material aspects with the Agree-  
 9           ment.

10       (b) WAIVER AND RELEASE OF CLAIMS AGAINST THE  
 11   UNITED STATES.—

12           (1) IN GENERAL.—In consideration of perform-  
 13       ance by the United States of all actions required by  
 14       the Agreement and this Act, including the appro-  
 15       priation of all funds authorized under sections 8(h)  
 16       and 9(d)(1), the Tribe shall execute a waiver and re-  
 17       lease of the United States from—

18           (A) all claims for water rights within the  
 19       Snake River Basin, injuries to such water  
 20       rights, or breach of trust claims for failure to  
 21       protect, acquire, or develop such water rights  
 22       that accrued at any time up to and including  
 23       the effective date determined under paragraph  
 24       (2);

1 (B) all claims for injuries to the Tribe's  
 2 treaty fishing rights, to the extent that such in-  
 3 juries result or resulted from reductions in the  
 4 quantity of water available in the Snake River  
 5 Basin;

6 (C) all claims of breach of trust for failure  
 7 to protect Nez Perce springs or fountains treaty  
 8 rights reserved in article VIII of the Treaty of  
 9 June 9, 1863 (14 Stat. 651); and

10 (D) all claims of breach of trust arising  
 11 out of the negotiation of or resulting from the  
 12 adoption of the Agreement.

13 (2) EFFECTIVE DATE.—

14 (A) IN GENERAL.—The waiver and release  
 15 contained in this subsection shall take effect on  
 16 the date on which the amounts authorized  
 17 under sections 8(h) and 9(d)(1) are appro-  
 18 priated.

19 (B) PERIODS OF LIMITATION; EQUITABLE  
 20 CLAIMS.—

21 (i) IN GENERAL.—All periods of limi-  
 22 tation and time-based equitable defenses  
 23 applicable to the claims set forth in para-  
 24 graph (1) are tolled for the period between

1 the date of enactment of this Act until the  
 2 earlier of—

3 (I) the date on which the  
 4 amounts authorized under sections  
 5 8(h) and 9(d)(1) are appropriated; or  
 6 (II) October 1, 2017.

7 (ii) EFFECT OF SUBPARAGRAPH.—  
 8 This subparagraph neither revives any  
 9 claim nor tolls any period of limitation or  
 10 time-based equitable defense that may have  
 11 expired before the date of enactment of  
 12 this Act.

13 (3) DEFENSE.—The making of the amounts of  
 14 appropriations authorized under sections 8(h) and  
 15 9(d)(1) shall constitute a complete defense to any  
 16 claim pending in any court of the United States on  
 17 the date on which the appropriations are made.

18 (c) RETENTION OF RIGHTS.—

19 (1) IN GENERAL.—The Tribe shall retain all  
 20 rights not specifically waived or released in the  
 21 Agreement or this Act.

22 (2) DWORSHAK PROJECT.—Nothing in the  
 23 Agreement or this Act constitutes a waiver by the  
 24 Tribe of any claim against the United States result-  
 25 ing from the construction and operation of the

1 Dworshak Project (Project PWI 05090), other than  
 2 those specified in subparagraphs (A) and (B) of sub-  
 3 section (b)(1).

4 (3) FUTURE ACQUISITION OF WATER RIGHTS.—  
 5 Nothing in the Agreement or this Act precludes the  
 6 Tribe or allottees, or the United States as trustee  
 7 for the Tribe or allottees, from purchasing or other-  
 8 wise acquiring water rights in the future to the same  
 9 extent as any other entity in the State.

10 **SEC. 11. MISCELLANEOUS.**

11 (a) GENERAL DISCLAIMER.—The parties expressly  
 12 reserve all rights not specifically granted, recognized, or  
 13 relinquished by the settlement described in the Agreement  
 14 or this Act.

15 (b) DISCLAIMER REGARDING OTHER AGREEMENTS  
 16 AND PRECEDENT.—

17 (1) IN GENERAL.—Subject to section 9(b)(3),  
 18 nothing in this Act amends, supersedes, or preempts  
 19 any State law, Federal law, Tribal law, or interstate  
 20 compact that pertains to the Snake River Basin.

21 (2) NO ESTABLISHMENT OF STANDARD.—Noth-  
 22 ing in this Act—

23 (A) establishes any standard for the quan-  
 24 tification of Federal reserved water rights or  
 25 any other Indian water claims of any other In-

1           dian tribes in any other judicial or administra-  
 2           tive proceeding; or

3           (B) limits the rights of the parties to liti-  
 4           gate any issue not resolved by the Agreement or  
 5           this Act.

6           (3) NO ADMISSION AGAINST INTEREST.—Noth-  
 7           ing in this Act constitutes an admission against in-  
 8           terest against any party in any legal proceeding.

9           (c) TREATY RIGHTS.—Nothing in the Agreement or  
 10          this Act impairs the treaty fishing, hunting, pasturing, or  
 11          gathering rights of the Tribe except to the extent expressly  
 12          provided in the Agreement or this Act.

13          (d) OTHER CLAIMS.—Nothing in the Agreement or  
 14          this Act quantifies or otherwise affects the water rights,  
 15          claims, or entitlements to water, or any other treaty right,  
 16          of any Indian tribe, band, or community other than the  
 17          Tribe.

18          (e) RECREATION ON DWORSHAK RESERVOIR.—

19                (1) IN GENERAL.—In implementing the provi-  
 20          sions of the Agreement and this Act relating to the  
 21          use of water stored in Dworshak Reservoir for flow  
 22          augmentation purposes, the heads of the Federal  
 23          agencies involved in the operational Memorandum of  
 24          Agreement referred to in the Agreement shall imple-

1       ment a flow augmentation plan beneficial to fish and  
2       consistent with the Agreement.

3               (2) CONTENTS OF PLAN.—The flow augmenta-  
4       tion plan may include provisions beneficial to rec-  
5       reational uses of the reservoir through maintenance  
6       of the full level of the reservoir for prolonged periods  
7       during the summer months.

8       (f) JURISDICTION.—

9               (1) NO EFFECT ON SUBJECT MATTER JURIS-  
10       DICTION.—Nothing in the Agreement or this Act re-  
11       stricts, enlarges, or otherwise determines the subject  
12       matter jurisdiction of any Federal, State, or Tribal  
13       court.

14              (2) CONSENT TO JURISDICTION.—The United  
15       States consents to jurisdiction in a proper forum for  
16       purposes of enforcing the provisions of the Agree-  
17       ment.

18              (3) EFFECT OF SUBSECTION.—Nothing in this  
19       subsection confers jurisdiction on any State court  
20       to—

21                       (A) enforce Federal environmental laws re-  
22       garding the duties of the United States; or

- 1 (B) conduct judicial review of Federal
- 2 agency action.

Passed the Senate November 19, 2004.

Attest:

*Secretary.*

108TH CONGRESS  
2D SESSION

**S. 2605**

---

---

**AN ACT**

To direct the Secretary of the Interior and the heads of other Federal agencies to carry out an agreement resolving major issues relating to the adjudication of water rights in the Snake River Basin, Idaho, and for other purposes.